

Introduced by Senator Polanco

December 22, 1998

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 126, as introduced, Polanco. Sentencing.

Existing law states the findings and declarations of the Legislature that (1) the purpose of imprisonment for crime is punishment, (2) this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances, and (3) the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion. Existing law provides that these findings and declarations shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders, and further provides that the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

This bill instead would provide that these findings and declarations shall not be construed to preclude educational, vocational, and drug treatment programs that are designed to rehabilitate nonviolent, first-time felony offenders and to



reduce the rate of recidivism. The bill further would state the intent of the Legislature to encourage the development of policies and programs consistent with the intent to reduce the rate of recidivism.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code is
2 amended to read:

3 1170. (a) (1) The Legislature finds and declares that
4 the purpose of imprisonment for crime is punishment.
5 This purpose is best served by terms proportionate to the
6 seriousness of the offense with provision for uniformity in
7 the sentences of offenders committing the same offense
8 under similar circumstances. The Legislature further
9 finds and declares that the elimination of disparity and
10 the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in
12 proportion to the seriousness of the offense as determined
13 by the Legislature to be imposed by the court with
14 specified discretion.

15 (2) Paragraph (1) shall not be construed to preclude
16 programs, including educational, *vocational, and drug*
17 *treatment* programs, that are designed to rehabilitate
18 nonviolent, first-time felony offenders, *and to reduce the*
19 *rate of recidivism*. The Legislature encourages the
20 development of policies and programs designed to
21 educate and rehabilitate nonviolent, first-time felony
22 offenders consistent with the purpose of imprisonment,
23 *and the intent to reduce the rate of recidivism*.

24 (3) In any case in which the punishment prescribed by
25 statute for a person convicted of a public offense is a term
26 of imprisonment in the state prison of any specification of
27 three time periods, the court shall sentence the
28 defendant to one of the terms of imprisonment specified
29 unless the convicted person is given any other disposition
30 provided by law, including a fine, jail, probation, or the
31 suspension of imposition or execution of sentence or is



1 sentenced pursuant to subdivision (b) of Section 1168
2 because he or she had committed his or her crime prior
3 to July 1, 1977. In sentencing the convicted person, the
4 court shall apply the sentencing rules of the Judicial
5 Council. The court, unless it determines that there are
6 circumstances in mitigation of the punishment
7 prescribed, shall also impose any other term that it is
8 required by law to impose as an additional term. Nothing
9 in this article shall affect any provision of law that imposes
10 the death penalty, that authorizes or restricts the
11 granting of probation or suspending the execution or
12 imposition of sentence, or expressly provides for
13 imprisonment in the state prison for life. In any case in
14 which the amount of preimprisonment credit under
15 Section 2900.5 or any other provision of law is equal to or
16 exceeds any sentence imposed pursuant to this chapter,
17 the entire sentence shall be deemed to have been served
18 and the defendant shall not be actually delivered to the
19 custody of the Director of Corrections. The court shall
20 advise the defendant that he or she shall serve a period
21 of parole and order the defendant to report to the parole
22 office closest to the defendant's last legal residence, unless
23 the in-custody credits equal the total sentence, including
24 both confinement time and the period of parole. The
25 sentence shall be deemed a separate prior prison term
26 under Section 667.5, and a copy of the judgment and other
27 necessary documentation shall be forwarded to the
28 Director of Corrections.

29 (b) When a judgment of imprisonment is to be
30 imposed and the statute specifies three possible terms,
31 the court shall order imposition of the middle term, unless
32 there are circumstances in aggravation or mitigation of
33 the crime. At least four days prior to the time set for
34 imposition of judgment, either party or the victim, or the
35 family of the victim if the victim is deceased, may submit
36 a statement in aggravation or mitigation to dispute facts
37 in the record or the probation officer's report, or to
38 present additional facts. In determining whether there
39 are circumstances that justify imposition of the upper or
40 lower term, the court may consider the record in the case,



1 the probation officer's report, other reports including
2 reports received pursuant to Section 1203.03 and
3 statements in aggravation or mitigation submitted by the
4 prosecution, the defendant, or the victim, or the family of
5 the victim if the victim is deceased, and any further
6 evidence introduced at the sentencing hearing. The
7 court shall set forth on the record the facts and reasons for
8 imposing the upper or lower term. The court may not
9 impose an upper term by using the fact of any
10 enhancement upon which sentence is imposed under any
11 provision of law. A term of imprisonment shall not be
12 specified if imposition of sentence is suspended.

13 (c) The court shall state the reasons for its sentence
14 choice on the record at the time of sentencing. The court
15 shall also inform the defendant that as part of the
16 sentence after expiration of the term he or she may be on
17 parole for a period as provided in Section 3000.

18 (d) When a defendant subject to this section or
19 subdivision (b) of Section 1168 has been sentenced to be
20 imprisoned in the state prison and has been committed to
21 the custody of the Director of Corrections, the court may,
22 within 120 days of the date of commitment on its own
23 motion, or at any time upon the recommendation of the
24 Director of Corrections or the Board of Prison Terms,
25 recall the sentence and commitment previously ordered
26 and resentence the defendant in the same manner as if
27 he or she had not previously been sentenced, provided
28 the new sentence, if any, is no greater than the initial
29 sentence. The resentence under this subdivision shall
30 apply the sentencing rules of the Judicial Council so as to
31 eliminate disparity of sentences and to promote
32 uniformity of sentencing. Credit shall be given for time
33 served.

34 (e) (1) Notwithstanding any other law and consistent
35 with paragraph (1) of subdivision (a) of ~~Section 1170~~, if
36 the Director of Corrections or the Board of Prison Terms
37 or both determine that a prisoner satisfies the criteria set
38 forth in paragraph (2), the director or the board may
39 recommend to the court that the prisoner's sentence be
40 recalled.



1 (2) The court shall have the discretion to resentence
2 or recall if the court finds both of the following:

3 (A) The prisoner is terminally ill with an incurable
4 condition caused by an illness or disease that would
5 produce death within six months, as determined by a
6 physician employed by the department.

7 (B) The conditions under which the prisoner would be
8 released or receive treatment do not pose a threat to
9 public safety.

10 The Board of Prison Terms shall make findings
11 pursuant to this subdivision before making a
12 recommendation for resentence or recall to the court.
13 This subdivision does not apply to a prisoner sentenced to
14 death or a term of life without the possibility of parole.

15 (3) Within 10 days of receipt of a positive
16 recommendation by the director or the board, the court
17 shall hold a hearing to consider whether the prisoner's
18 sentence should be recalled.

19 (4) The prisoner or his or her family member or
20 designee may request consideration for recall and
21 resentencing by contacting the chief medical officer at
22 the prison or the Director of Corrections. Upon receipt of
23 the request, if the director determines that the prisoner
24 satisfies the criteria set forth in paragraph (2), the
25 director or board may recommend to the court that the
26 prisoner's sentence be recalled. The director shall submit
27 a recommendation for release within 30 days in the case
28 of inmates sentenced to determinate terms and, in the
29 case of inmates sentenced to indeterminate terms, the
30 director may make a recommendation to the Board of
31 Prison Terms with respect to the inmates who have
32 applied under this section. The board shall consider this
33 information and make an independent judgment
34 pursuant to paragraph (2) and make findings related
35 thereto before rejecting the request or making a
36 recommendation to the court. This action shall be taken
37 at the next lawfully noticed board meeting.

38 (5) Any recommendation for recall submitted to the
39 court by the Director of Corrections or the Board of
40 Prison Terms shall include one or more medical

1 evaluations, a postrelease plan, and findings pursuant to
2 paragraph (2).

3 (6) If possible, the matter shall be heard before the
4 same judge of the court who sentenced the prisoner.

5 (f) Any sentence imposed under this article shall be
6 subject to the provisions of Sections 3000 and 3057 and any
7 other applicable provisions of law.

8 (g) A sentence to state prison for a determinate term
9 for which only one term is specified, is a sentence to state
10 prison under this section.

